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In re Application of KIMCHY et al :
U.S. Application No.: 10/533,568 :
PCT Application No.: PCT/IL03/00917 :
Int. Filing Date: 04 November 2003 :
Priority Date Claimed: 04 November 2002 : DECISION
Attorney Docket No.: 29684 :
For: APPARATUS AND METHODS FOR :
IMAGING AND ATTENUATION :
CORRECTION :

This is in response to applicant's "Renewed Petition Under 37 CFR 1.47(a)" filed 07 March 2006.

BACKGROUND

On 04 November 2003, applicant filed international application PCT/IL03/00917, which claimed priority of an earlier United States application filed 04 November 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 21 May 2004. The thirty-month period for paying the basic national fee in the United States expired on 04 May 2005.

On 03 May 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 06 October 2005, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 05 January 2006, applicant filed a petition under 37 CFR 1.47(a).

On 08 February 2006, this Office mailed a decision dismissing the 05 January 2006 petition.

On 07 March 2006, applicant filed the present renewed petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by: (1) an oath or declaration by each applicant on his or her own behalf and on behalf of the nonsigning joint inventors, (2) factual proof that the missing joint inventors refuse to join in the application or cannot be reached after diligent effort, (3) the fee set forth in §1.17(i), and (4) the last known addresses of the nonsigning joint inventors.

Petitioner has previously satisfied items (1), (3), and (4) above.

With regard to item (2) above, MPEP 409.03(d) states in relevant part,

Where a refusal to sign the application papers is alleged, the circumstances of this refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature. A copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.


The petition states that joint inventor Roni Amrami refuses to sign the application papers. Petitioner has not adequately demonstrated that a bona fide attempt was made to present a copy of the application papers to Amrami for signature. Specifically, although Mr. Amrami was mailed a copy of the application papers via registered mail (see affidavit of Jonathan Milberg), the petition does not establish that Mr. Amrami received the correspondence. The translation provided with the renewed petition confirms that Amrami never received the application papers. As stated in the decision mailed 08 February 2006, it would not be reasonable to conclude that Mr. Amrami refuses to sign papers that he has not received. Applicant has not asserted that Mr. Amrami cannot be reached after diligent effort but is entitled to do so.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Extensions of time are available under 37 CFR 1.136(a). Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)". No additional petition fee is required.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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